

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

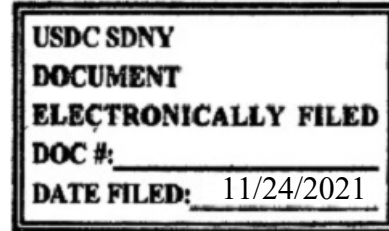
MORGAN ART FOUNDATION LIMITED,

Plaintiff,

v.

MICHAEL MCKENZIE, et al.,

Defendants.



18-CV-4438 (AT) (BCM)

ORDER

BARBARA MOSES, United States Magistrate Judge.

The Court has received and reviewed:

- (1) Defendant Michael McKenzie's notice dated November 22, 2021 (Dkt. No. 456), in which he asks this Court to grant his pending motion (Dkt. No. 444) to compel the testimony of nonparty Osvaldo Gonzalez "without any conditions," notwithstanding Gonzalez's refusal to testify on Fifth Amendment grounds at his deposition on October 1, 2021, because Gonzalez "completely waived his right to remain silent on the subject matter at issue" by executing a declaration (Dkt. No. 446-2) as to that subject matter on August 31, 2021; and
- (2) Gonzalez's letter dated November 18, 2021, received by the Court on November 23, 2021 (Dkt. No. 457), in which he states that on November 17, 2021, he received a copy of a complaint filed against him by McKenzie with the Lawyers' Fund for Client Protection, in which McKenzie also "indicated that he has filed, and will be pursuing charges against [Gonzalez] with the Westchester District Attorney's Office." Gonzalez does not attach a copy of the complaint filed with the Lawyers' Fund.

It is hereby ORDERED that, no later than **December 1, 2021**, McKenzie shall submit a supplemental brief addressing (1) whether and when he filed a claim against Gonzalez with the Lawyers' Fund and/or made a complaint about Gonzalez to the Westchester County District Attorney (or any other prosecutorial agency); and (2) the impact of the claim and/or complaint on McKenzie's prior waiver of his Fifth Amendment rights with respect to the matters to which he attested in his declaration.

It is further ORDERED that, along with his supplemental brief, McKenzie shall submit to this Court, properly authenticated, true, and correct copies of his claim against Gonzalez with the Lawyers' Fund and any complaint he has made about Gonzalez to the Westchester County District Attorney (or any other prosecutorial agency). These documents may be filed under electronic seal, at the "ex parte" level, pending further review by the Court. The supplemental brief must be filed in public view unless it discusses the content of the sealed documents, in which case those portions of the brief may be redacted from the copy filed in public view and the unredacted brief may be filed under electronic seal, at the "ex parte" level, pending further review by the Court.

It is further ORDERED that any opposition by Gonzalez to the motion to compel is due **one week (seven days) after the service of McKenzie's supplemental papers upon him.**

It is further ORDERED that McKenzie shall promptly serve this Order (and his supplemental papers, when filed) on Gonzalez, by email, and file proof of such service on the docket.

Dated: November 24, 2021
New York, New York

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge